

GAHC010087972023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./377/2023

SRINIVAS B.V.
S/O VENKATESH G.V.
RESIDENT OF 726/A, MC MODI
STREET, RAJAJINAGAR, BANGALORE NORTH BENGALURU 560010
CURRENTLY THE PRESIDENT OF INDIAN YOUTH CONGRESS, INDIAN
NATIONAL CONGRESS, NEW DELHI.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE LEARNED PP, ASSAM

2:DR ANGKITA DUTTA
D/O LATE ANJAN DUTTA
R/O HOUSE NO. 16
BISHNU PATH

RUKMINI GAON
GUWAHATI
ASSAM-78102

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Advocate for the petitioner : Mr. K.N. Choudhury, Sr. Advocate

Advocate for the respondents : Mr. D. Saikia, Advocate General, Assam
Mr. M. Phukan, Public Prosecutor,
Gauhati High Court (for respondent No.1)
Mr. P. Bora, Sr. Advocate (for respondent No. 2).

Dates of hearing :26.04.2023, 02.05.2023 and 04.05.2023

Date of Judgment/Order : 04.05.2023

JUDGMENT & ORDER

Heard Mr. K.N. Choudhury, learned Sr. Counsel appearing for the petitioner as well as Mr. D. Saikia, learned Advocate General, Assam and Mr. M. Phukan, learned Public Prosecutor appearing for the State/respondent No.1. Also heard Mr. P. Bora, learned Sr. Counsel for the respondent No. 2/informant victim.

2. By this petition under Section 482 Cr.P.C. the petitioner has prayed as follows-

- i) Set aside/quash Dispur P.S. Case No. 692/2023 under Sections 509/294/341/352/354/354A (iv)/506 of the IPC read with Section 67 of the Information Technology Act, 2000 (for short 'I.T. Act');
- ii) Set aside/quash the Notice, dated 23.04.2023 issued by Dispur P.S.;
- iii) Direct the respondents not to take any coercive action against the petitioner during pendency of the present petition;
- iv) Stay the proceedings under notice of personal appearance/summons, dated 21.04.2023 issued by the Inspector General of Police, CID, Ulubari, Guwahati, Assam during the pendency of the present petition and further,

3. In the interim, the petitioner has prayed for stay of the operation of the impugned FIR in Dispur P.S. Case No. 692/2023 as well as to direct the respondent State not to take any coercive steps/action against him.

4. The contentions made in the First Information Report (FIR), in short, are that the informant/victim, is the former President of the Assam Youth Congress and the present petitioner is the President of Indian Youth Congress. It has been alleged that the petitioner has been persistently harassing the informant/victim woman mentally by way of sexist and slang words and also threatening her with dire consequences if she complained the same before the high office bearers of the Youth Congress. It is further alleged that when the alleged victim went to Raipur in the state of Chhattisgarh to attend the plenary session of the Congress Party held on 25.02.2023, she was received by one Bhupen Bora, the President of the Assam Pradesh Congress Committee (APCC) at Mayfair Hotel and met other high office bearers of the Congress party. At the entrance of the hotel when she came across the petitioner, he heckled her by holding her arms and also threatened her by using slang words. It is also alleged that despite complaining about the persistent unwarranted conduct of the petitioner on several occasions to the high office bearers of the Congress Party, her complaint did not yield any result and as such, she lodged the instant FIR.

5. On 26.04.2023, this Court passed the following order (relevant portions)-

“5. Issue notice to the respondent No.2. Steps be taken by registered speed post with A/D within 2(two) days.

6. As the learned Public Prosecutor appearing for the respondent No.1/State has accepted notice, no fresh notice needs to be issued. However, a copy of the petition along with the documents annexed thereto, be furnished to Mr. Saikia and Mr. Phukan jointly during

the course of the day.

7. Call for a legible scanned copy of the case diary along with 164 statement of the victim/complainant.

8. Mr. K.N. Choudhury, learned Sr. counsel appearing for the petitioner, has persistently insisted on grant of interim relief to the petitioner today itself on merit of the case as well as on the ground that the complainant has filed the case for political vendetta. In support of his submission and in the backdrop of nature of facts and circumstances, Mr. Choudhury has relied on the following grounds-

- (a) That Assam Police has no jurisdiction to inquire into any of the allegations made in the complaint let alone registration of the instant FIR. In this context, Mr. Choudhury has relied on the judgments of the Hon'ble Supreme Court rendered in **(i) Union of India Vs. Ashok Kumar Sharma**, reported in **(2021) 12 SCC 674** and **(ii) Bimla Rawal and Ors. Vs. NCT of Delhi**, reported in **2008(1) LRC 391 (Delhi)**;
- (b) That the ingredients of the offences as alleged are not made out on a prima facie reading of the complaint. In this regard, Mr. Choudhury has referred to the judgment rendered by the Hon'ble Apex Court in **N.S. Madhanagopal & Anr. Vs. K. Lalitha, in Criminal Appeal No.1759/2022**;
- (c) That there is inordinate delay in filing the FIR. In this context, Mr. Choudhury has referred to the following judgments rendered by the Hon'ble Supreme Court in **(i) Satpal Singh Vs. State of Haryana**, reported in **(2010) 8 SCC 714** **(ii) State of Andhra Pradesh Vs. M. Madhusudhan Rao**, reported in **(2008) 15 SCC 582** **(iii) Kishan Singh Vs. Gurpal Singh**, reported in **(2010) 8 SCC 775** and **(c) Lalita Kumari Vs. Govt. of U.P.**, reported in **(2014) 2 SCC 1**;
- (d) That the case is filed by the complainant with an ulterior political motive. In this regard, Mr. Choudhury has relied on the decision of the Hon'ble Delhi High Court in **Brinda Karat and Ors. Vs. NCT of Delhi, W.P. (Crl.) No. 1624/2020, decided on 13.06.2022** and further;
- (e) has cited a number of contradictions and improvisations of the statements of the complainant.

9. Referring to the above judgments, Mr. Choudhury, learned Sr. Counsel, has persistently and strenuously insisted on granting interim reliefs to the petitioner today itself, failing which, it is submitted that the petitioner has expressed willingness to approach the Hon'ble Supreme Court.

10. Mr. D. Saikia, learned Advocate General, has raised objection to grant of any interim relief to the petitioner today itself without perusal of the case diary by this Court and in the backdrop of the allegations made in the F.I.R. has relied on the following judgments rendered

by the Hon'ble Supreme Court-

- (i) **Lalita Kumari Vs. Government of U.P. and others**, reported in **(2014) 2 SCC 1**;
- (ii) **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others**, reported in **2021 SCC OnLine SC 315**;
- (iii) **Manoj Kumar Sharma and others Vs. State of Chhattisgarh and another**, reported in **(2016) 9 SCC 1**;
- (iv) **Rasiklal Dalpatram Thakkar Vs. State of Gujarat and others**, reported in **(2010) 1 SCC 1**;
- (v) **Satvinder Kaur Vs. State (Govt. of NCT of Delhi) and another**, reported in **(1999) 8 SCC 728**;
- (vi) **Ravinder Kumar and another Vs. State of Punjab**, reported in **(2001) 7 SCC 690**; and
- (vii) **State of Haryana and others Vs. Bhajan Lal and others**, reported in **1992 Supp(1) SCC 335**.

11. Having heard the learned counsel of both sides and consideration of the averments made in the petition supported by copy of relevant documents as well as the citations referred to above in support of respective submissions and counter-submissions, this Court is of the considered opinion that perusal of the case diary including the statement of the victim woman under Section 164 Cr.P.C. is of utmost necessity for a just decision on the interim prayers of the petitioner.

12. Accordingly, the interim prayer will be considered only after receipt of the scanned copy of the case diary and service of notice on the respondent No. 2.

List on **02.05.2023.**"

6. The record shows that as per the above order, the petitioner has taken steps for service of notice on the respondent No.2/informant victim and accordingly, she is represented by Mr. P. Bora, learned Senior Counsel.

7. Mr. K.N. Choudhury, learned Sr. Counsel appearing for the petitioner, contended that a bare perusal of the FIR, it would be apparent that the allegations made therein are not only vague, fabricated and an afterthought,

but are result of political vendetta. According to Mr. Choudhury, the allegations have been made to settle personal scores and ego satisfaction of the informant/alleged victim woman. Mr. Choudhury contended that if the investigation into the case is allowed to continue, it would be an abuse of the process of law and further, the FIR, apart from being without jurisdiction, does not at all make out the basic ingredients of the penal sections under which the case has been registered by police and as such, in the light of the ratio of the judgment rendered by the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal, reported in 1992 Supp. (1) SCC 335***, the FIR is liable to be quashed under Section 482 Cr.P.C.

8. Referring to the judgment of the Hon'ble Supreme Court rendered in ***Kapil Agarwal Vs. Sanjay Sharma, reported in 2021 SCC OnLine SC***, Mr. Choudhury contended that criminal proceedings cannot be used as a tactic to create pressure on the accused. Mr. K.N. Choudhury, learned Sr. Counsel, further contended that the core allegation of the alleged victim woman/informant is that the petitioner on 25.02.2023, in Raipur, Chhattisgarh, heckled her by holding her arm pushing and pulling and threatening her with dire consequences indicating thereby that the alleged offences were mainly committed in Raipur, Chhattisgarh only and hence, the registration of the FIR by Dispur Police Station is not only *mala fide* but also without jurisdiction. In this context, Mr. Choudhury has referred to the judgment of the Hon'ble Supreme Court delivered in ***Union of India Vs. Ashok Kumar Sharma, reported in (2021) 12 SCC 674*** wherein it has been observed that there is the practice of registering an FIR as a Zero FIR, when the police station at which the FIR is registered does not have territorial jurisdiction, it is made over to the police station which has jurisdiction in the matter. Mr. Choudhury submitted that similar

view was taken by the Hon'ble Delhi High Court in ***Bimla Rawal and Ors. Vs. NCT of Delhi, reported in 2008 (1) LRC 391 (Delhi)***. In support of his submission, Mr. Choudhury also relied on the judgment of the High Court of Delhi in ***Kirti Vashisht Vs. State and Ors. in Crl. M.C. No.5933/2019 and Crl. M.A. No. 40833/2019*** and order, dated 17.04.2023 passed by the Allahabad High Court in ***Sandeep Singh Vs. State of U.P. and Three Ors. in Criminal Misc. Writ Petition No.5057/2023***.

9. It has been further submitted by Mr. Choudhury that a perusal of the FIR does not disclose as to the manner in which the alleged outraging comments were made and more particularly, where such comments were made. On the point of delay in filing the FIR, Mr. Choudhury contended that the same has been lodged after much delay and such delay has not been explained by the alleged victim woman in accordance with the Hon'ble Supreme Court guidelines/judgments inasmuch as the FIR discloses that the alleged offences were committed at Raipur on 25.02.2023 only and on some earlier points of time, but the FIR was filed belatedly on 19.04.2023. In this regard, Mr. Choudhury has relevantly referred to the judgment of the Hon'ble Supreme Court in ***Satpal Singh Vs. State of Haryana, reported in (2010) 8 SCC 714***, wherein it has been stated, *inter alia*, that delay in lodging FIR more often than not, results in embellishment and exaggeration which is a creature of an afterthought for which the prosecution must furnish a satisfactory explanation for the delay, failing which the prosecution case must be rejected in its entirety. In such cases of unexplained delay, Mr. Choudhury submitted, in filing FIR as observed by the Hon'ble Supreme Court in ***State of Andhra Pradesh Vs. M. Modhusudhan Rao, reported in (2008) 15 SCC 582*** and in ***Kishan Singh Vs. Gurpal Singh, reported in (2010) 8 SCC 775***, the Court has to look for

a plausible explanation for such delay and in absence of such an explanation, the delay may be fatal. Further, Mr. Choudhury contended, that as held, *inter alia*, in ***Lalita Kumari Vs. Govt. of Uttar Pradesh, reported in (2014) 2 SCC 1***, in a case where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months' delay in reporting the matter without satisfactorily explaining the reasons for delay, a **preliminary enquiry** into the facts and circumstances alleged must be made. However, Mr. Choudhury contended that in this case, no such preliminary enquiry was conducted by the police even though inordinate delay is apparent on the face of the FIR itself and as such, the unexplained delay in the FIR is certainly fatal to the prosecution case making the same liable to be quashed.

10. Mr. Choudhury emphatically contended that the present FIR has been registered by the police with an ulterior motive to injure and humiliate the petitioner and his reputation by having him arrested. Mr. Choudhury, learned Sr. Counsel, also referred to certain defamatory and scandalous remarks made by the informant/alleged victim against the petitioner, which invited a legal notice being issued on 18.04.2023 by the Legal Cell of their political party of which both parties are high level office bearers and sought for an immediate public apology from the informant and thereafter, instead of replying to the notice, the informant/alleged victim promptly lodged the said false and concocted FIR on the following day, that is, on 19.04.2023. Therefore, Mr. Choudhury contended that the FIR in question being apparently politically driven, the criminal justice system cannot be used to settle political and personal rivalry. Mr. Choudhury, in this regard, has relied on a decision of the Hon'ble Delhi High Court rendered in ***Brinda Karat and Ors. Vs. NCT of Delhi, in W.P. (Crl.) 1624/2020***.

11. Significantly, Mr. Choudhury contended that there are material

contradictions and improvisations of the statement narrated in the FIR which are ascertainable from the transcript of the interview given by the alleged victim woman to a leading media house. As reported in various media platforms, Mr. Choudhury contended, it transpires that the ruling party in the Centre as well as in Assam is desperately trying to hatch a political conspiracy against the petitioner, who is a popular national political stalwart, to harm his reputation and desist him from participating in the campaigning for the upcoming assembly election in the State of Karnataka.

12. Additionally, out of the context, Mr. K.N. Choudhury, learned Sr. Counsel, abruptly submitted that if in the backdrop of facts and circumstances which the petitioner has averred in the petition, no interim relief as prayed is granted, this Court shall not grant any interim relief in any other petition under Section 482 Cr.P.C. as there must be only one law in this regard. Further, Mr. Choudhury submitted that the Judges, who are on the verge of retirement, it is noticed, always pass orders in favour of the Government. In this regard, referring to a statement of the then Union Minister of Law and Justice for the Government of India, Late Arun Jaitley, made in the parliament, Mr. Choudhury contended that that is why a cooling off period after retirement of a Judge has been advocated. Mr. Choudhury showed some copy of the aforesaid statement of Late Jaitley purportedly published in Live Law from a distance, which this Court, of course, could not read due to distance. Mr. Choudhury advanced his submission at length on the grounds pleaded by the petitioner at the height of his voice creating an unwarranted unruly situation breaking the usually everyday calm and quiet congenial Court environment, in presence of a crowd of learned Advocates, seniors and juniors as well as the Court staff present inside it.

13. Opposing the petition, Mr. D. Saikia, learned Advocate General, appearing

for the State respondent No.1, contended that the test for quashing an FIR in exercise of the inherent jurisdiction of the High Court under Section 482 Cr.P.C., the Court is called upon to see whether the allegations, as they stand without adding or detracting from the complaint/FIR, prima facie establish the ingredients of the offences alleged. Mr. Saikia further submitted that it is required to be kept in mind that law has not specified any limitation or time for lodging FIR and therefore, a delayed FIR in any case cannot operate as fatal. The High Court, it is settled in a catena of judgments of the Hon'ble Apex Court, has no jurisdiction to examine the correctness or otherwise veracity of the allegations inasmuch as the same is the subject matter of trial. Referring to the decision of a three Judge Bench of the Hon'ble Supreme Court rendered in ***State of U.P. Vs. O.P. Sharma, reported in (1996) 7 SCC 705***, Mr. Saikia contended that it has been observed there that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its extraordinary inherent jurisdiction under Section 482 Cr.P.C. or under Articles 226 and 227 of the Constitution of India as the case may be and allow the law to take its own course. Mr. Saikia further contended that this view was reiterated by another three Judge Bench of the Hon'ble Apex Court in ***Rashmi Kumar Vs. Mahesh Kumar Bhada, reported in (1997) 2 SCC 397*** holding the view that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice.

14. Mr. Saikia relevantly quoting the observation of the Hon'ble Apex Court in ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors. reported in AIR 2021 SC 1918*** contended once again that in a petition under Section 482 Cr.P.C. the Court is not required to consider whether or not

the merits of the allegations make out a cognizable offence. Mr. Saikia strenuously contended that the Court has to permit the investigating agency/police to investigate the allegations in the FIR if the same discloses any cognizable offence.

15. Mr. Saikia, learned Advocate General, also contended that as held in the case of ***Satvinder Kaur Vs. State (Govt. of NCT of Delhi) and another, reported in (1999) 8 SCC 728***, if the FIR prima facie discloses commission of an offence, the High Court should be reluctant to interfere and in course of investigation, if the investigating officer finds that the crime was not committed within his territorial jurisdiction, he can forward the FIR to the jurisdictional police station but, this would not mean that in a case which requires investigation, the police officer can refuse to register the FIR and/or investigate into it. Reading **Sections 177 and 178(c) Cr.P.C.**, Mr. Saikia contended that if it is uncertain in which of the several local areas the offence was committed or where several acts were done in different local areas, the Hon'ble Supreme Court held that the said offences can be enquired into or tried by Court having jurisdiction over any of such local areas. Mr. Saikia contended that on bare perusal of the FIR itself it appears that the alleged offences pertaining to outraging the modesty of the informant victim woman had been committed by the petitioner, during the period of about 6(six) months preceding filing of the FIR on 19.04.2023 and lastly, on 25.02.2023 in Raipur, Chhattisgarh and before and after thereof at Guwahati through various means, either physically or electronically and as such, there was no delay in filing the FIR at Dispur P.S., Guwahati, Assam. The explanation for the delay, if any, Mr. Saikia submitted, is well explained in the FIR itself as the victim woman complained of misdemeanour of the petitioner to the higher authority of the political party to

which both are belonged, but having not received any desired response, the victim filed the instant FIR promptly.

16. Mr. Saikia, referring to the allegations made in the FIR, contended that all the ingredients of the cognizable offences, under which the FIR is registered, are prima facie satisfied and therefore, the investigating agency needs to investigate into the same in accordance with law. Mr. Saikia contended that before registering the FIR on 20.04.2023 under Section 154 Cr.P.C., **a preliminary enquiry was done** to ascertain whether any cognizable offence as alleged therein was made out and accordingly, a police officer, after due preliminary enquiry, submitted a report on 20.04.2023 to the Officer-in-Charge of Dispur P.S. reporting that the matter needed thorough investigation. Therefore, Mr. Saikia contended that now a duty is cast on the petitioner to oblige to the notice, dated 23.04.2023, issued under Section 41A Cr.P.C. by the Addl. Deputy Commissioner of Police (East Guwahati) calling upon him to appear before the Officer-in-Charge of Dispur P.S. on 02.05.2023 at 11 a.m. It has been pertinently contended that in compliance of the advisory of the Ministry of Home Affairs, Government of India, dated 12.10.2015, addressed to the Chief Secretaries of all State Governments/Union Territory Administrations prompt action in registration of FIRs has been taken.

17. Mr. Saikia strenuously further contended that the police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV to investigate into the cognizable offences and as such, as held by the Hon'ble Apex Court in *Neeharika (Supra)*, this Court should not thwart the investigation into the FIR which prima facie discloses cognizable offences by quashing it. Accordingly, Mr. D. Saikia, learned Advocate General, Assam, contended that the instant petition may be dismissed as the petitioner

has been repeatedly making efforts to give a political colour to the aforesaid cognizable allegations of serious nature pertaining to outraging modesty of the victim informant undermining the irretrievable injury thereby caused to her, personally and by publicly degrading her image. Mr. Saikia further submits today (04.05.2023) that the Hon'ble Supreme Court way back in the year 1997 laid certain guidelines to protect the working women against sexual harassment in workplaces. Mr. Saikia, learned Advocate General, pertinently referred to the paragraph No. 17 of the said judgment rendered in ***Vishaka and Ors. Vs. State of Rajasthan and Ors. ,reported in (1997) 6 SCC 241.***

18. Adding to the lengthy argument made by the learned Advocate General, Assam, Mr. M. Phukan, learned Public Prosecutor, submitted that when the allegations made in the FIR on its face value and accepted in its entirety do prima facie constitute the offences alleged, it may not be justified invoking inherent power of this Court under Section 482 Cr.P.C. to quash it as held in a catena of judgments of the Hon'ble Supreme Court. Mr. Phukan further submitted that as held by the Hon'ble Apex Court in *Neeharika (Supra)*, the Court cannot embark upon the merit of those allegations and in general, only in rarest of rare cases an FIR can be quashed. Mr. Phukan also submitted that on a cursory reading of the FIR, it having disclosed cognizable offences committed by the petitioner, the investigating agency should be allowed to exercise its statutory right and duty to investigate into those offences, which were allegedly continued to be committed by the petitioner at different places of India including at Guwahati either physically or electronically for/during a period expanding about 6(six) months immediately preceding lodging of the FIR. Mr. P. Bora, learned Sr. Counsel appearing for the respondent No. 2/informant victim, submits today (04.05.2023) that as the allegations made in the FIR even they

are taken at their face value and accepted in their entirety satisfy the ingredients of the serious offence like outraging the modesty of a woman, the High Court in exercise of its inherent power cannot interfere and quash the same. Mr. Bora further submits that the petitioner was issued notice by the police calling upon him to appear before the Officer-in-Charge of Dispur P.S. in connection with the FIR/complaint on 02.05.2023 at 11 a.m., but he has not appeared. Mr. Bora submits that it is the duty of the petitioner to comply with the notice and if he complies with it, the legislature has provided in Section 41A (3) Cr.P.C. that the police '**he shall not be arrested in respect of the offence referred to in the notice**'. Therefore, citing the guidelines provided in the judgment rendered by the Apex Court in *Bhajan Lal (Supra)*, Mr. Bora submits, the prayers made by the petitioner in the petition cannot, in fact, legally be allowed if the allegations made in the FIR are read as a whole and thereby quash the FIR. Mr. Bora further submits that the police should be allowed to exercise their statutory right of investigation into the allegations made in the FIR which involve outraging the modesty of the informant.

19. This Court has given due consideration to the above submissions made by both sides at length. Also perused the citations relied on by both sides and in this context, this Court has taken the aide of the scanned copy of the case diary including the statement of the alleged victim woman recorded under Section 164 Cr.P.C.

20. In Paragraph Nos. 102 and 103 of *Bhajan Lal (supra)* the Hon'ble Supreme Court held as extracted hereunder-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the

following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*

21. Also, in Paragraph No. 80 of *Neeharika (Supra)*, the Hon'ble Supreme Court laid guidelines to be followed in dealing with a petition under Section 482 Cr.P.C. as under-

“80. *In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the*

pendency of the quashing petition under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr. P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all

facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr. P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr. P.C., while dismissing/disposing of the quashing petition under Section 482 Cr. P.C. and/or

under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

22. A perusal of the scanned copy of the case diary including the FIR and the 164 statement of the victim woman, it, *inter-alia*, prima facie transpires that both the petitioner and the victim woman are belonged to the same national political party and the allegations are made that the petitioner has subjected the alleged victim informant to harassment by making sexist comments using slang words persistently and threatened her not to report his misdemeanour of ill treatment, misbehaviour and sexist remarks passed against her to the high office bearers of their party. Such allegations of commission of cognizable offences, which continued for about 6(six) months preceding the date of filing the FIR on 19.04.2023 certainly attract the offences under Sections 509/294 and 506 of the IPC.

23. The FIR further discloses that on 25.02.2023, at a hotel at Raipur, Chhattisgarh, the petitioner allegedly heckled the victim holding her arm, pushing and pulling and threatened her using slang words saying that he would ruin her career in the party if she went to complaint against him before the high

office bearers of the party. Further, as per the victim's allegation, besides various humiliating verbatim the petitioner uttered the words "***eilerki.... aaye ye tum kiyalikhterehte ho...ye sab tum kiyapitaarehtahei, vodka pitaa ho ya taakilapitaarehte ho...***" The aforesaid utterances, as a whole, prima facie constitute the offences which apparently satisfy the ingredients of the penal provisions of Sections 352/354/ 354A (iv) of the IPC.

24. Besides the above, the alleged victim woman informant against her right was threatened not to go outside the border of Assam to attend any meeting of the party, which prima facie satisfy the ingredients of the offence of criminal restraint punishable under Section 341 of the IPC. Not only this, she had allegedly received various threatening over electronic means while staying at Guwahati from before and after the aforesaid Raipur incident on 25.02.2023 which also attracts the cognizable offence under Section 67 of the I.T. Act. The victim informant has alleged in the FIR that all those remarks and threatening aimed at her using slang words, using criminal force by heckling her, holding her by her arm including the aforesaid words uttered by the petitioner are out and out derogatory, sexist, chauvinistic, demeaning, outrageous to her modesty as a woman. The question of applicability of Section 67 of the I.T. Act in view of Section 77 of the said Act being a question of facts and law can only be considered during trial if charge-sheet is submitted after completion of investigation in the case. It may be mentioned that normally, Sections 177 and 178 Cr.P.C. determine the place of inquiry or trial of offence which can appropriately be applied after investigation is made to some extent by police in the case. So, this Court is of the prima facie opinion that Dispur P.S. has jurisdiction to investigate into the offences allegedly committed by the petitioner at different places viz. at Guwahati and outside of it.

25. The plea of contradictions and improvisations of the statement of the victim woman between the allegations made in the FIR and her interview to the media house are not ascertainable at the present stage as the xeroxed copy of the unauthenticated documents, which the petitioner has relied on as annexures have not been seized by the police yet. There is also no indication on the case diary that the FIR is politically motivated and based on some false and concocted story. The nature of offences disclosed in the FIR are crime against the society being basically pertaining to outraging of the modesty of woman. Therefore, at the present stage of investigation, as held in the aforementioned judgments of the Hon'ble Apex Court in *Bhajan Lal (supra)* and *Neeharika (supra)*, this Court cannot scrutinize the correctness or veracity of those allegations in the instant petition under Section 482 Cr.P.C.

26. With regard to the plea of delay, the contents of the FIR show that the unbecoming behaviour on the part of the petitioner towards the victim was complained to the high office bearers of the political party, but despite waiting for some days, the same yielded no response and, in turn, she had to face legal notice, dated 18.04.2023 vide Annexure-VI raising some counter-allegations of defamation for allegedly abusing and tarnishing the image of the petitioner publicly on some wrong facts and with malicious intent, thwarting thereby the aforesaid allegations raised by the victim woman against the petitioner, who is the All India President of the Youth Wing of the party. This Annexure-VI document being an extraneous document pertaining to internal matter of the said political party and which is not part of the case diary, this Court has no obligation to look into it to justify to any extent the counter-allegation of falsity of the FIR, which is under investigation of the police. So, Annexure-VI cannot be said to be of any help to the petitioner's plea of innocence at the threshold of

police investigation into the FIR. As the alleged offences were committed physically and electronically, continuously for about 6 (six) months at Raipur and Guwahati immediately preceding the filing of the FIR on 19.04.2023, it cannot be said that the FIR was lodged on 19.04.2023 after inordinate delay without explanation.

27. For the above stated reasons, and in the light of the ratio of the judgments referred to by the learned counsel of both sides, this Court is of the considered opinion that no interference is called for in the FIR in question in exercise of the extraordinary inherent jurisdiction of this Court under Section 482 Cr.P.C. ostensibly to prevent abuse of the process of law and to secure the ends of justice.

28. Accordingly, the petition being devoid of any merit, the same stands **dismissed**.

29. So far the contentions made by Mr. K.N. Choudhury, learned Senior Counsel, stated in paragraph No. 9 of the order, dated 26.04.2023 and in paragraph No. 12 in today's order, this Court in exercise of judicial restraint and keeping in mind the glorious past of 75 years of existence of this esteemed High Court and further, being not relevant in the context of the instant petition, is not inclined to take into consideration of those avoidable submissions while deciding the instant petition. It may pertinently be pointed out that a Judge performs his duties with absolute fairness based on record and relevant laws only applicable to the facts and circumstances in each case, without fear or favour or affection or ill-will. Therefore, this Court hopes and trusts that good conscience shall prevail upon Mr. Choudhury, who is widely assumed to be a legal acumen. This Court is, however, unfortunately compelled to record its displeasure and reserves the right for reference in future in the event of recurrence of such

avoidable embarrassing situation in the Court.

30. Forward copy of this order to the Registrar General of this High Court for favour of placing before Hon'ble the Chief Justice for information and to the Registrar (Vigilance) of this High Court for record so far paragraph No. 29 of this order is concerned.

This disposes of the petition.

JUDGE

Anupam

Comparing Assistant